

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Serial No.: | 09/955,594 | Confirmation No.: | 1177 |
| Applicant: | Philip M. Ginsberg | | |
| Title: | SYSTEMS AND METHODS FOR SHARING EXCESS PROFITS | | |
| Filed: | September 5, 2001 | Attorney Docket No.: | 01-1047 |
| Art Unit: | 3694 | Customer No.: | 63710 |
| Examiner: | Daniel L. Greene | | |

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant requests review of the Office Action mailed February 4, 2009. No amendments are being filed with this request. This request is being filed with a Notice of Appeal.

ARGUMENTS**Clear Error in 35 USC 102 Rejection**

35 U.S.C. 102 requires that each element of a claim be taught in a single reference. The Office Action makes a rejection of claims 2, 4, 6, 7, 9, 10, 13-20, 22-29, and 31-33 under 35 U.S.C. 102 with reference to a combination of cited sections of a reference, Beuttell, and several official notices. There is no suggestion that Beuttell teaches any of the elements to which official notice is taken (i.e., commission payments, bonuses, and paychecks). Accordingly, any rejection based on this combination of Beuttell and any of commission payments, bonuses, and paychecks could only be proper under 35 USC 103, if at all, because no single reference teaching each and every element is even alleged to exist. Accordingly, withdrawal of the rejection under 35 USC 102 as improper is requested.

Clear Error in Official Notices

United States federal agencies must provide “**substantial evidence**” for factual findings. Many rejections in the Office Action make factual findings based on official notices with **no evidence** provided at all. Accordingly, these rejections cannot possibly be valid under the substantial evidence standard and must be withdrawn. Particularly, all rejections made under 35 USC 102 rely on official notices regarding commissions, paychecks, and bonuses with **no evidence provided at all** regarding this official notice. The rejections of all independent claims under 35 USC 103 rely on official notice regarding applications of various laws with **no evidence provided at all** regarding application of the laws. The rejections of dependent claims 17, 24, and 32 rely on official notice regarding an element of a law that relates to retroactivity of price gouging laws that the Office Action merely states “one must understand” with **no evidence provided at all** to support that one would understand that such laws might be applied in this way rather than any of the numerous other ways of applying such laws. **No evidence at all** cannot possibly meet the **substantial evidence** standard, and therefore each and every rejection that relies on these notices must be withdrawn.

Accordingly, withdrawal of all rejections under 35 USC 102 as improper is requested, withdrawal of the rejections of all independent claims under 35 USC 103 as improper is requested, and withdrawal of the rejections of dependent claims 17, 24, and 32 as improper is requested. Also, since each dependent claim depends from one of the independent claims, withdrawal of these claims is also requested.

The Office Action Fails To Address All Limitations in 35 USC 102 Rejection

A proper rejection under 35 USC 102 must address **each and every limitation** of a claim being rejected. The Office Action fails to address **each and every limitation** of each of dependent claims 20, 29, and 33 because the Office Action **fails to even mention the limitations** of these claims at all in making the rejection under 35 USC 102. The Office action cannot possibly address **each and every limitation** of these claims if it **fails to even mention the limitations** of these claims. Applicants therefore request the withdrawal of the rejections of claims 20, 29, and 33 under 35 USC 102 as being improper.

The Office Action Fails To Address All Limitations in 35 USC 103 Rejection

A proper rejection under 35 USC 103 must address **each and every limitation** of a claim being rejected. The Office Action fails to address **each and every limitation** of each of dependent claims 13, 20, 29, and 33 because the Office Action **fails to even mention the limitations** of these claims at all in making the rejection under 35 USC 103. The Office action cannot possibly address **each and every limitation** of these claims if it **fails to even mention the limitations** of these claims. Applicants therefore request the withdrawal of the rejections of claims 13, 20, 29, and 33 under 35 USC 103 as being improper.

Clear Error in Finality

The Examiner has failed to provide a single complete Office Action that properly addresses all claims and all claim limitations in accordance with statutory requirements. The Prior Paper did not present a rejection under 35 USC 101 at all. As discussed above, the Office Action includes numerous errors in the 35 USC 102 and 35 USC 103 rejections that have been present in prior papers. . Accordingly, a proper set of rejections has not even been presented a single time and therefore no final Office Action may be presented at this time. Therefore, Applicants request withdrawal of any finality of the Office Action.

CONCLUSION

Because the Examiner failed to provide proper rejections for any of the claims, withdrawal of rejections of these claims and the finality of any Office Actions is requested.

Respectfully submitted,

June 30, 2009
Date

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